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ABSTRACT

Practical guidelines are presented for implementing a discipline policy at the local level for students with disabilities, with suggestions for distinguishing policies affecting students in general and students with disabilities. Emphasis is placed on emerging issues and practical consequences. Relevant federal and state court decisions are cited, including the U.S. Supreme Court's decision in Honig versus Doe. Issues of concern include: due process protection for students classified as disabled before expulsion or long-term suspension of more than 10 days; the legal basis stipulating that students with disabilities can be treated in the same manner as students without disabilities for short-term suspension and other typical disciplinary measures; petitioning for a court order temporarily changing the student's placement when the individual presents a continuing threat of disruption; relationship of the student's misbehavior to the disability; continuation of educational services following expulsion or long-term suspension; other situations such as successive short-term suspensions; use of drugs or alcohol or carrying a weapon by a student classified as disabled and applicable disciplinary procedures. (Contains approximately 50 citations to court cases). (SW)

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Discipline of Students with Disabilities: An Update. A Legal Memorandum.

Gail Sorensen

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A Legal Memorandum

JUNE 1995 National Association of Secondary School Principals ISSN 0192-6152

Discipline of Students With Disabilities: An Update

INTRODUCTION

The disciplinary exclusion of students with disabilities from the regular school program (by suspension, expulsion, or other means) continues to be a problem of exceptional practical importance to school principals, policymakers, and administrators of programs for exceptional children. By 1992, complex lessons from the Supreme Court's 1988 decision in *Honig* v. *Doe*[1] had filtered down to lower levels, leaving many educators confused and fearful about what to do with the dangerous students they now believe cannot be excluded from school.

Although it has been clear since the 1970s that federal law mandates a free, appropriate public education for all students with disabilities, there was great doubt until the late 1980s regarding when, and under what particular circumstances, an exclusionary punishment amounted to a prohibited "change of placement" so as to invoke the procedural protections of the Individuals with Disabilities Education Act (IDEA)[2] and/or Section 504 of the Rehabilitation Act (Section 504).[3] Until as recently as this year, there was substantial disagreement as to whether and under what circumstances educational services to students with disabilities could be completely terminated.[4] Another difficult issue concerns the legality of multiple or serial suspensions.

In the face of remaining legal uncertainty, and the perceived importance of the issues involved, this *Legal Memorandum* focuses on practical guidelines for the implementation of discipline policy at the local level, including suggestions for distinguishing discipline policy for disabled students from discipline policy affecting students in general. Settled problems will be only briefly noted so that emphasis can be placed on emerging issues and practical consequences. Although not a major theme here, it must be noted that the requirements of federal law are minimum requirements subject to expansion by state and/or local policy. State law, therefore, will always be an additional consideration of substantial importance.

SHORT AND LONG-TERM SUSPENSIONS: AN IMPORTANT DISTINCTION

A major issue that was settled by the U.S. Supreme Court's 1988 decision in *Honig* v. *Doe* was that exclusion of a student classified as having a disability under the IDEA for more than 10 days constitutes a change in placement, and without parental agreement or a court order this can be accomplished only by invoking the procedural protections of federal law. Students with disabilities who may not have been evaluated and/or placed under IDEA are also afforded some due process under Section 504 of the Rehabilitation Act prior to expulsion, long-term suspension (more than 10 days), or indefinite suspension.[5]

As for short-term suspensions and other typical disciplinary measures (e.g., time-out, detention), it also is generally clear following *Honig* and subsequent cases that students with disabilities can be treated under the IDEA and Section 504 in the same manner as students without disabilities.[6]

In situations where the student presents a continuing threat of disruption, even without parental agreement to a placement change, the district may submit a petition for a court order temporarily changing the student's placement.[7] That these are the only permissible options was reiterated by Robert R. Davila, Assistant Secretary, Office of Special Education and Re-

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habilitative Services (OSERS), in a letter to a U.S. senator following the *Honig* decision.[8] There is no exception in federal law for unilateral changes of placement due to dangerousness. This position was recently reaffirmed by an administrative hearing officer in a long-running dispute between ED and the State of Virginia.

An administrative decision from Delaware illustrates the *Honig* principle that long-term suspensions and other changes of placement can be made with parental consent.[9] In that situation, with parental permission, the student was placed on homebound instruction and later in a self-contained classroom for a period of more than a year pending the outcome of a criminal trial for sexual assault and the school district's subsequent expulsion proceedings. The hearing panel found that all appropriate expulsion procedures had been followed, including a proper determination that the student's misbehavior was not related to his handicapping condition (a learning disability and social/emotional maladjustment), an issue that will be further discussed below. The panel determined, therefore, that the expulsion was valid.

A federal district court decision from Texas illustrates the scope of judicial discretion in situations where a temporary change in placement is needed while the district pursues administrative procedures.[10] John, a middle school student, was seriously emotionally disturbed, and also had learning and speech difficulties and a psychotic disorder. Between the beginning of the school year and an early October incident in which John endangered his own life by climbing onto a high ledge, he had engaged in approximately 30 physical assaults and numerous verbal assaults, and had caused repeated and severe physical damage to significant areas of the school, among other misbehavior. Neither the individual aide nor the behavior management program designed for John was sufficient to control his behavior. Pursuant to the school district's request for an injunction following the October incident, the court ordered the student placed temporarily in a behavioral modification class or on homebound instruction, a choice to be made by his parents. According to the court, the public interest would be served by placing the student in an environment that would protect John himself as well as other students.

Even though the above cases suggest that districts can be successful in gaining temporary injunctions where evidence exists of a student's dangerous behavior, it is worth noting that verbal threats, standing alone, may be insufficient evidence of dangerousness to support an injunctive change in placement.[11]

RELATION OF STUDENT DISABILITY TO MISCONDUCT

The proposition that handicapped students cannot be punished by long-term suspension or expulsion for behavior that is a result of, or related to, their disabilities derives from the 1970s.[12] This proposition has been universally accepted, along with the notion that punishment should not be given for misbehavior that is a result of an inappropriate placement.[13] In other words, special education discipline accepts the principle of Anglo-American law that punishment should depend on a finding of fault.

Substantial authority continues to suggest that a multidisciplinary team must make the determination, and that this team may be the same group that makes the initial placement decisions.[14] If another group of individuals makes the determination it should be composed of persons who know the involved student and are familiar with special education.[15] Situations continue to arise, however, in which a school administrator (or an administrator in consultation with a regular teacher or a teacher of special education) believes that this decision can be made without consulting the multidisciplinary placement team.[16] This is one area where discipline policy for disabled students must be tailored to the requirements of federal law.

Although it is more often than not the case that a student's misbehavior is found to be related to his or her handicapping condition,[17] a state hearing officer upheld the expulsion of a student with a mild learning disability from school for shooting a bow and arrow at a school bus.[18] In another situation, a 19-year-old student's homebound placement for the rest of the year was held to have been properly implemented following a multidisciplinary team's determination that the disability (emotional impairment) was not related to the misbehavior (drug distribution).[19] A determination had been made that the student was able to understand and respond appropriately to the discipline code.

In these cases it is probable that a decision about relatedness (a "manifestation decision") arrived at by

the proper group of individuals, following federal law, will be upheld at higher levels of appeal.

EDUCATIONAL SERVICES DUE FOLLOWING EXPULSION OR LONG-TERM SUSPENSION

This issue is of the utmost importance to school districts that are developing discipline policy for students with disabilities. Although at one time the subject of substantial disagreement, by early 1993 it appeared reasonably certain that districts must abide by federal policy requiring the continuation of services for students covered by the IDEA.

In an important case, *Metropolitan School District* v. *Davila*, the Seventh Circuit Court of Appeals indicated that a policy interpretation by the Office of Special Education and Rehabilitative Services (OSERS) (U.S. Department of Education) mandating the provision of education services to students given long-term suspensions or expelled from school was valid.[20] The actual legal controversy in *Davila* concerned whether the OSERS policy (originally announced in a 1989 letter from Robert R. Davila, Assistant Secretary of OSERS, to Frank E. New, Director of Special Education in the Ohio Department of Education) was a legislative rule that would have required notice and comment under the federal Administrative Procedures Act or whether it was an interpretative rule not requiring such procedures.[21]

In 1992, six months before the Seventh Circuit decision, Robert Davila had answered another letter dealing with the same issue from Mr. Ellison Smith of Columbia, S.C.[22] and gave the same opinion to Mr. Smith that he had given in 1989 to Mr. New: All states receiving federal funds under the IDEA must ensure that students suspended or expelled for reasons unrelated to their disabilities must be provided with continuing educational services. Furthermore, Mr. Davila made clear that this responsibility superseded any apparent judicial authority to the contrary: "OSERS expects that all States that receive Part B funding, including South Carolina, will comply with this requirement."

Students who meet *only* the Section 504 definition of disability but not so classified under the IDEA may not be entitled to a continuation of educational services following a proper long-term exclusion.[23] The above discussion nevertheless has persuaded most districts that the easiest policy is merely to provide educational services for all students with disabilities who are expelled or suspended for a long term.

SHORT-TERM SUSPENSIONS AND OTHER DISCIPLINARY ACTIONS

In a case where a district regularly placed students with disabilities into an in-school suspension situation, it was determined that, because the suspension program was in all ways comparable to the students' regular educational placement, the suspensions did not constitute a change in placement even though, in total, the suspension period was more than 10 days.[24] The special program was conducted by a certified special education teacher and was limited to a maximum of 10 students at any one time. On the other hand, any substantial modification in a student's program continuing beyond 10 days likely would be equivalent to a change in placement, even though the student remained at all times in the school setting.

Another question that has often come up concerns successive short-term suspensions. In a letter to the Kansas State Department of Education, the Office of Special Education Programs (OSEP) said that the suspension clock begins anew following any change in placement effectuated by appropriate procedures.[25] A note from OSEP suggests, however, that the validity of a series of such renewals may be limited and that continued misbehavior may suggest that educational services and/or placements may be inappropriate.

The issue may have been particularly important in Kansas, which has adopted the position that the multidisciplinary team must meet to consider either discipline or a placement change following 10 days of suspension within any one school year. The Kansas policy takes a conservative approach to resolving the issue of cumulative or serial suspensions equaling a change in placement that was left open following *Honig* v. *Doe*.

Several complaints brought to the attention of the Office of Civil Rights (OCR) indicate that Section 504 may also be violated when a pattern of exclusions constitutes a significant change in placement, a determination that is to be made on a case-by-case basis.[26] In one instance, for example, Section 504 was considered to be violated by cumulative suspensions totaling approximately 39 days in one year without evalu-

ations to determine whether the student's misbehavior was a manifestation or result of the handicapping condition.[27] Rejected as insufficient were verbal manifestation determinations made by the teacher and vice principal prior to each suspension.

Also violative of Section 504 was a 10-day suspension following three suspensions of 2, 1, and 5 days respectively without a reevaluation of the student's placement.[28] In this letter of finding, OCR clearly stated that "[w]hile school districts may suspend handicapped children for a total of 10 days in a school year for seriously disruptive or dangerous behavior, the exclusion of a handicapped child for more than a total of 10 days during a school year constitutes a significant change in ... placement."[29] This letter of finding reiterated a position taken by OCR earlier in the year that suspensions totaling more than 10 days in a year were changes in placement.[30] There is substantial evidence that districts have taken a conservative approach and have been complying for some time with the cumulative 10-day rule.[31]

Illustrating the opposite proposition, that cumulative suspensions of 10 days or fewer do not equal a placement change, is a case where a handicapped student was suspended 9 times for a total of 7 and a half days; OCR determined that no significant change in placement occurred.[32] Incidentally, the case noted that it was the practice of the school district to convene the placement committee for any disabled student who was suspended for more than 3 days.

Even though OCR has issued no policy memorandum to support its interpretations, they appear to suggest that educational policy should reflect a 10-day rule. When any series of suspensions totals more than 10 days, particularly if the suspensions all occur in 1 school year, that series likely would be equal to a change in placement requiring the procedural protections of federal law.

One case held that, even though a non-classified student could be excluded from school pursuant to regular procedures, with all educational services terminated, the student did not lose the right to a subsequent special education assessment and, if found eligible, to reinstatement in school.[33]

In another situation (in which state law required the evaluation of students with suspected disabilities to be completed within 30 days) a student was suspended for 94 days during the 173-day evaluation period. Not surprisingly, the OCR held, pursuant to a complaint, that the district had violated Section 504 of the Rehabilitation Act and its implementing regulations by failing to complete the evaluation in a timely manner and by denying the child a free, appropriate education.[34] Likewise, OCR made clear in another situation that 43 days of suspension was an illegal change in placement, when the district had reason to believe that a student was handicapped and that the handicap was related to the misbehavior.[35]

In a similar situation, in which a district expelled a student in February for the remainder of the school year instead of providing a special education evaluation as requested by the parent, OCR determined that Section 504 had been violated.[36] Additional violations occurred because of the district's failure to notify the parent of due process rights and because the student's return to school was conditioned on his successful treatment for Attention Deficit Disorder.

The above cases, taken together, suggest that neither the IDEA nor Section 504 will permit students who have not been evaluated and placed in special education to be disciplined for behavior that is a result of their disability, at least pending completion of requested or concurrent placement proceedings. Subsequent discipline could be imposed only if the student were found not to be disabled and, possibly if, although disabled, it were later determined that the disability and the misbehavior were unrelated.[37]

Where the school has been providing transportation pursuant to state law and/or the student's individual education plan (IEP), there is every indication that suspension from transportation will be treated the same as a suspension from school unless alternative means of transportation are provided.[38] Therefore, whenever such a suspension amounts to a long-term, indefinite, or permanent exclusion, all appropriate change of placement procedures must be followed, e.g., a meeting of the multidisciplinary team, a determination of relatedness, an assessment of the appropriateness of the current placement, etc.

DRUGS, ALCOHOL, AND FIREARMS

An amendment to Section 504 of the Rehabilitation Act of 1973 (made pursuant to the Americans with Disabilities Act [ADA], P.L. 101-336) makes clear that the definition of "individual with a disability" under 504 does not include those who currently

use illegal drugs or alcohol and have no other disabilities. Furthermore, students who are accorded protection under Section 504 but who, in addition, currently use or abuse drugs or alcohol, can be disciplined for use or possession to the same extent that such disciplinary action is taken against other students.[39]

OCR policy tracks the ADA, stating that special disciplinary procedures under Section 504 would not apply to students with disabilities who use illegal drugs or alcohol.[40] It should be noted, however, that OCR has made it clear that ordinary disciplinary procedures for students with disabilities (as opposed to special procedures) follow only from *use* and not from mere possession of drugs or alcohol. In addition, in order to avoid charges of discrimination, students with disabilities who use drugs or alcohol must be disciplined and treated in the same manner as other students.[41]

As a caution to a possibly too ready dismissal of special disciplinary procedures, it should be noted that the IDEA would protect a classified student (who also used illegal drugs). For example, the IDEA would mandate the use of special procedures in any action seeking the long-term exclusion of an emotionally disturbed student for drug use, or for other misbehavior even though the student used drugs. Those procedures would begin with a multidisciplinary team's assessment of relatedness and, ultimately, could preclude discipline. In contrast, a drug or alcohol user with only a mild orthopedic impairment, and therefore not protected by the IDEA, would not be eligible under Section 504 for special treatment in the disciplinary process.[42]

The Gun-Free Schools Act of 1994 was passed on October 20, 1994.[43] As a condition of receiving federal assistance under the Elementary and Secondary Education Act[44], the Act mandates that by October 20, 1995, each state shall enact a law "requiring local educational agencies to expel from school for a period of not less than one [calendar] year a student who is determined to have brought a weapon to a school" except that the expulsion requirement *shall* be modified on a case-by-case basis.[45] The Act further specifies that it "shall be construed in a manner consistent with the Individuals with Disabilities Education Act (IDEA)."[46] The IDEA itself was amended to permit a 45 calendar-day interim alternative educational placement for students bringing weapons to school. This is a maximum alternative placement unless parents contest the school's action, in which case the student is to remain in the interim placement until the controversy is resolved.[47] Also mandated by federal law is a *local* policy requiring referral of students possessing weapons to the criminal/juvenile justice system.[48]

Under the Gun-Free Schools Act, a "weapon" is defined as a "firearm"[49] which, in summary, is a gun or destructive device (e.g., a bomb or a grenade) but not fireworks and not a rifle or shotgun intended for recreational use. States and/or districts may create their own definitions of "weapon" for purposes of the Gun-Free Schools Act, but any such definitions must meet minimum federal requirements. For purposes of the interim educational placement authorized under the IDEA, the applicable definition of weapon would be that found in federal law and noted above.

CHALLENGING ALLEGEDLY DISCRIMINATORY DISCIPLINARY PROCEDURES

Because Section 504 is aimed especially at discriminatory treatment, it is the usual vehicle to challenge punishments that are thought to be discriminatory. In one situation, Section 504 was held violated by the disciplinary isolation of two emotionally and/or behaviorally disabled students in a storage closet for 7 and a half and 4 days respectively.[50] Because students without disabilities had never been disciplined by being placed in a storage closet, it was determined that the students were discriminated against by being treated in a way that was significantly different from treatment accorded other students. In addition, OCR held that the students had been denied a free, appropriate education, a claim that also could have been made under the IDEA.[51]

Another case involving discriminatory discipline involved an HIV-positive student who was suspended for 2 consecutive 5-day periods for participation in an altercation; other involved (nondisabled) students were not similarly disciplined.[52] These cases suggest the importance of applying punishments to students with disabilities that are similar to those applied to students without disabilities.[53] (It might be noted that isolation in a storage closet might violate substantive due process under the U.S. Constitution.)

Although courts continue to hold that ordinary corporal punishment does not violate constitutional due process,[54] a federal district court denied a school district's motion to dismiss a case, partly because the complaint stated a claim for violation of substantive due process under the Fourteenth Amendment, in this case the denial of life and liberty without due process.[55]

Neither the teacher who administered the punishment, the school board, the superintendent, nor the principal was immune from potential liability for violating the constitutional rights of the boy, a fifth grader who paid severely for talking with a friend.

The student, who suffered from medical, orthopedic, and learning disabilities as a result of a congenital heart defect and the effects of childhood meningitis had been required by his teacher to run a 350-yard sprint, called the "gut run." The teacher apparently imposed the punishment despite full knowledge of the student's heart condition, other physical limitations, and doctor's orders to the contrary. The student died as a result.

CONCLUSIONS AND RECOMMENDATIONS

As can be seen from the above discussion, the legal requirements for continuation of special education services subsequent to long-term exclusion have begun to become quite clear. The same is true regarding the necessity for change of placement procedures pursuant to serial or cumulative suspensions totaling more than 10 days.

Development of a conservative policy for the discipline of students with disabilities, therefore, might well take account of the following conclusions and recommendations:

- Exclusion from special education for more than 10 days is the equivalent of a change in placement and must be effectuated by statutorily prescribed procedures.
- Following a properly executed change in the educational placement of a disabled student, the 10-day suspension clock generally begins anew.
- Short-term suspensions and other typical disciplinary measures may be imposed on all students, whether the students are disabled or not.
- "Manifestation determinations" regarding the relation of a disciplinary infraction and a student's disability must be made by the multidisciplinary evaluation and placement team or by another group knowledgeable about special education.
- Appropriate educational services must be continued in situations in which students with disabilities have been given long-term suspensions or expelled from schools.
- With regard to discipline, students who are suspected of being disabled or who are undergoing initial evaluation should be treated the same as classified students or those with known disabilities.
- The type of punishment given to disabled students should not be substantially different or more severe than that given other students.
- School boards should regularly review discipline policy and practice to ensure compliance with federal statutory and constitutional law.

Implementation of the above guidelines (along with any special requirements of state law) should eliminate most legal challenges related to the discipline of students with handicapping conditions, including students who may be dangerous.

While it is true that federal law requires special procedures to be followed in cases involving the long-term exclusion of handicapped students, it is not true, as some administrators have concluded, that these students cannot be disciplined, or even excluded from school under some circumstances. Temporary exclusions for fewer than 10 days are permissible, for example, with either parental or judicial consent. Federal law precluding a complete termination of educational services, however, should serve two important purposes: Ensure exceptional children of an appropriate education and, at the same time, allow administrators and policymakers to preserve and protect the educational environment for all students.

ENDNOTES

1. 484 U.S. 305, 108 S.Ct. 592, 98 L. Ed.2d 686 (1988).
2. 20 U.S.C. § 1400 *et seq.* (1975).
3. 29 U.S.C. § 794 (1973).
4. *See, e.g.*, S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030, 102 S.Ct. 566, 70 L. Ed.2d 473 (1981); Doe v. Maher, 793 F.2d 1470 (9th Cir. 1986), *aff'd as modified sub nom.* Honig v. Doe, 484 U.S. 305, 108 S.Ct. 592, 98 L. Ed.2d 686 (1988).
5. *See, e.g.*, Lumberton (Miss.) Public School Dist., 18 IDELR 33 (SEA 1991) at 34.
6. *See, e.g.*, Memphis (Tenn.) City School Dist., 18 IDELR 539 (OCR 1991) (four-hour suspension not a significant change in placement requiring re-evaluation); Greenville County (S.C.) School Dist., 17 EHLR 1120 (OCR 1991) (two in-school suspensions of one day each not violative of Section 504).
7. *See, e.g.*, Texas City Indep. School Dist. v. Jorstad, 17 EHLR 554, 752 F.Supp. 231 (S.D. Tex. 1990) (emotionally handicapped student enjoined from attending regular classes pending outcome of administrative review).
8. Hubbard, 17 EHLR 837 (OSERS 1991).
9. Christiana School Dist., 18 IDELR 996 (SEA Del. 1992).
10. Texas City Indep. School Dist., 752 F.Supp. 231 (S.D. Tex. 1990).
11. Board of Educ. v. Cherry Hill Township, 16 EHLR 340 (SEA N.J. 1990).
12. *See, e.g.*, Doe v. Koger, 480 F.Supp. 225 (N.D. Ind. 1979) (expulsion permissible where misbehavior not related to disability and placement not inappropriate).
13. *Id. See also EHA Policy Letter* (OSEP), 2 EHLR 213:179 (1988) (inappropriate placement precludes disciplinary change in placement).
14. *See, e.g., OCR Memorandum*, 16 EHLR 491 (1989).
15. *See, e.g.*, S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981), *cert. denied* 454 U.S. 1030, 102 S.Ct. 566, 70 L.Ed.2d 473 (1981). Turlington was an early decision specifying the composition of the team of individuals who must be involved in making manifestation determinations.
16. *See, e.g.*, Mobile County (Ala.) School Dist. #3, 17 EHLR 475 (OCR 1990).
17. A classic case on this issue is School Bd. v. Malone, 762 F.2d 1210 (4th Cir. 1985) (learning disability led to loss of self-image making student a "ready stooge" for the distribution of illegal drugs). *But cf.*, Doe v. Maher, 793 F.2d 1470, 1480 n. 8 (9th Cir. 1986).
18. Elk Grove Unified School Dist., 16 EHLR 622 (SEA Cal. 1990).
19. In the Matter of a Child with Disabilities, 18 IDELR 1318 (SEA Mich. 1992).
20. Metropolitan School Dist. v. Davila, 969 F.2d 485 (7th Cir. 1992), *rev'd.* 17 EHLR 1176 (S.D. Ind. 1991), *cert. denied* 113 S.Ct. 1360 (1993).
21. The policy interpretation from the Department of Education can be found in the following letter: New, EHLR 213:258 (OSERS 1989).
22. Smith, 18 IDELR 685 (OSERS 1992).
23. For an explanation of the Office of Civil Rights policy on termination of services see *OCR Senior Staff Memorandum*, 3 EHLR 307:05 (1988).
24. Chester County (Tenn.) School Dist., 17 EHLR 301 (OCR 1990).
25. Rhys, 18 IDELR 217 (OSEP 1991).
26. *See, e.g.*, St. Marys (Pa.) Area School Dist., 16 EHLR 1156 (OCR 1990). For the original OCR policy on cumulative suspensions *see OCR Memorandum*, 14 EHLR 307:05 (1988) (cumulative suspensions of more than 10 days equal a change in placement if there exists a pattern of suspensions).
27. Mobile County (Ala.) School Dist., 18 IDELR 70 (1991).
28. York (S.C.) School Dist. #3, 17 EHLR 475 (OCR 1990).
29. *Id.* at 479.
30. Anderson County (Tenn.) School Dist., 16 EHLR 760 (OCR 1990).

31. *See, e.g.*, Millcreek Township (Pa.) School Dist., 16 EHLR 741 (OCR 1989).
32. Ponca City (Okla.) Public Schools, 17 EHLR 1202 (OCR 1991).
33. *See* Alvord Unified School Dist., 17 EHLR 1021 (SEA Cal. 1990).
34. Lumberton (Miss.) Public School Dist., 18 IDELR 33 (OCR 1991).
35. Mineral County (Nev.) School Dist., 16 EHLR 668 (OCR 1990).
36. Ohio County (Ky.) School Dist., 17 EHLR 528 (OCR 1990).
37. *See* Alvord Unified School Dist., 17 EHLR 1021 (SEA Cal. 1990). It should be noted that this represents a change since the same issue was discussed in 1990.
38. *See, e.g.*, Mobile County (Ala.) School Dist., 18 IDELR 70 (1991).
39. 29 U.S.C. 706(8).
40. *OCR Staff Memorandum*, 17 EHLR 609 (1991).
41. *Id.*
42. *See, e.g.*, Uhlr, 18 IDELR 1238 (OSEP 1992) (district must comply with the IDEA despite knowledge of drug use by student).
43. L. 103-382, 108 Stat. 3518.
44. 20 U.S.C. § 2701 *et seq.*
45. 108 Stat. 3518, 3907.
46. *Id.* The Act does not mention Section 504 of the Rehabilitation Act, but 504 students would need to be treated like IDEA students.
47. 20 U.S.C. § 1415 (e) (3).
48. 108 Stat. 3518, 3907.
49. 18 U.S.C. § 921 (a) (3) (4).
50. McCracken County (Ky.) School Dist., 18 IDELR 482 (OCR 1991).
51. For another case illustrating that a violation of educational rights may exist even in the absence of discriminatory treatment under Section 504, *see* Denver (Colo.) Public School District #1, 19 IDELR 48 (OCR 1992).
52. Sumter County (S.C.) School Dist. #17, 17 EHLR 193 (OCR 1990).
53. *Cf.*, Chariho (R.I.) School Dist., 18 IDELR 1051 (OCR 1992) (because nondisabled as well as disabled students were sometimes assigned rooms without windows, assignment to a self-contained, windowless classroom was not discriminatory).
54. *See, e.g.*, Fee v. Herndon, 16 EHLR 1178 (5th Cir. 1990) (reasonable corporal punishment does not violate the Fourteenth Amendment's due process clause).
55. Waechter v. School Dist. No. 14-030, 773 F.Supp. 1005 (W.D. Mich. 1991).

This *Legal Memorandum* was written by Gail Sorensen, J.D., a professor in the department of educational administration at the University of North Carolina at Charlotte and edited by Ivan B. Gluckman, NASSP director of legal services. It is a revised version of an article that appeared in Volume 81 of *Education Law Reporter*, published by the West Publishing Company, and is republished with permission.

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